IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
v.	:	**CRIMINAL NO. 15-592-07**
KAIRASHAAD JOHNSON, **a/k/a "Boogie"**	:	

GOVERNMENT'S SENTENCING MEMORANDUM

The defendant in this case, Kairashaad Johnson, stands convicted of robbery that interferes with commerce under the Hobbs Act. The defendant is a first time violent crime offender, and given his lower culpability relative to his six co-defendants, a sentence of 45 months' imprisonment is an entirely appropriate disposition.

I. BACKGROUND

On April 14, 2016, a federal grand jury sitting in the Eastern District of Pennsylvania returned a 16-count superseding indictment charging defendant Kairashaad Johnson, among six others, with one count of robbery which obstructs, delays or affects commerce, and aiding and abetting, under 18 U.S.C. §§ 1951(a) and 2 (Count Eight); and one count of carrying, using and brandishing a firearm during and in relation to robbery which obstructs, delays or affects commerce, and aiding and abetting, under 18 U.S.C. §§ 924(c)(1) and 2 (Count Nine). The Superseding Indictment additionally charged a notice of forfeiture under 28 U.S.C. § 2461(c) and 18 U.S.C. § 924(d). The charges filed against Johnson arose from his involvement with two others in an armed robbery of a convenience store in Allentown on the evening of May 21, 2015.

On February 14, 2017, Johnson appeared before the Court and, pursuant to a written plea agreement, plead guilty to one count of robbery, and aiding and abetting a robbery which interferes with commerce, in violation of 18 U.S.C. §§ 1951 and 2 (Count Eight). In the plea agreement, the government agrees at the time of sentencing to dismiss Count Nine of the Superseding Indictment, charging Johnson with brandishing, using and carrying, and aiding and abetting the brandishing, use and carrying of a firearm during and in relation to armed bank robbery, in violation of 18 U.S.C. §§924(c) and 2. Further as set forth in the plea agreement, the parties agree that the plea is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) and that the following specific sentence is the appropriate disposition of the case: 45 months' imprisonment, three years' supervised release, a fine, if any, to be determined by the Court, restitution to be determined by the Court, and a $100 special assessment.

As set forth in the Presentence Investigation Report, as revised on May 10, 2017 (the "PSR"), on the evening of May 21, 2015, Jose Rapalo picked up co-defendants Jacob Pabon and Kairashaad Johnson in Allentown. Pabon was armed with a Ruger LC .380 caliber semiautomatic pistol. Johnson, who did not at that time have access to a firearm, was unarmed. Accordingly, before driving to the robbery, Rapalo drove to 324 N Law Street so that Johnson might secure the use of a firearm for a robbery. Co-defendant Victor Morales, who had control over the firearms stashed at 324 N Law Street, refused to loan Johnson a firearm. Instead of a firearm, Johnson secured the use of a bulletproof vest that had been stored at 324 N Law Street. However, on the way to the ensuing robbery, Johnson realized that a protective plate was missing from the vest, rendering it useless for its intended purpose. Johnson did however secure a bb gun to use during the robbery. PSR, ¶23.

At approximately 8:30 p.m., Rapalo drove with Pabon and Johnson to 10th Street

Market, located at 802 N 10th Street, Allentown, Pennsylvania. Rapalo remained in the getaway vehicle while Pabon and Johnson entered 10th Street Market, Pabon brandishing his .380 caliber semiautomatic pistol and Johnson a bb gun. Both robbers were masked, obscuring their faces. Once inside the convenience store, Pabon pointed his firearm at the cashier while Johnson ordered two customers in the back of 10th Street Market to lie on the floor. Johnson then walked behind the check-out counter and took by force, violence and fear of injury approximately $300 cash from the register and approximately 18 telephone calling cards, which were stored near the register. The three co-defendants split the proceeds from the robbery among themselves. PSR, §24.

II. SENTENCING CALCULATION

A. Statutory Maximum and Mandatory Minimum Sentences.

Absent acceptance of the plea agreement and conviction on both Counts Eight and Nine, the Court may impose the following statutory maximum and mandatory minimum sentences per count of conviction: (i) robbery which obstructs, delays or affects commerce, and aiding and abetting, under 18 U.S.C. §§ 1951(a) and 2 (Count Eight) -- 20 years' imprisonment, three years' supervised release, a $250,000 fine and a $100 special assessment; and (ii) carrying, using and brandishing a firearm during and in relation to robbery which obstructs, delays or affects commerce, and aiding and abetting, under 18 U.S.C. §§ 924(c)(1) and 2 (Count Nine) – life imprisonment, seven years' mandatory minimum imprisonment consecutive to any other sentence imposed, five years' supervised release, a $250,000 fine and a $100 special assessment.

The total maximum and mandatory minimum sentence the defendant faces if convicted of all counts in the Superseding Indictment is as follows: life imprisonment, 7 years' mandatory minimum imprisonment consecutive to any other sentence imposed, a five-year period of supervised release, a $500,000 fine, and a $200 special assessment. Probation is not available. Full restitution of as much as $480 also may be ordered. Forfeiture of the firearms and ammunition involved in the offenses may be ordered.

B. Sentencing Guidelines Calculation.

The Probation Office has calculated the defendant's advisory guideline range as total offense level of 23, Criminal History I, resulting in a guideline range of 46-57 months' imprisonment (PSR ¶¶ 38-48, 85). The Probation Office calculation is as follows:

Base level offense, under U.S.S.G. §2B3.1(a):	20
Firearm "otherwise used" during the robbery, under U.S.S.G. §2B3.1(b)(2)(B):	+6[1]
Timely acceptance of responsibility under U.S.S.G. § 3E1.1(a), (b):	-3
Total offense level	**23**

Based on a criminal history score of 0 points, Johnson has a criminal history category of I. PSR ¶ 51. Accordingly, based on the Probation Office calculation, Johnson has an advisory guideline range of 46 to 57 months' imprisonment. PSR ¶ 85.

In the plea agreement, the parties stipulated that, pursuant to U.S.S.G. §2B3.1(b)(2)(C), a firearm was brandished during the May 21, 2015 10th Street robbery charged in Count Eight of the Superseding Indictment and that Johnson's offense level is accordingly increased by five levels. The government calculates Johnson's total offense level as 22 and his Criminal History Category as I. Accordingly, the government's calculation of the guideline imprisonment range differs from that calculated by the U.S. Probation Office and is 41 to 51 months' imprisonment.

[1] As discussed below, the government and the defendant stipulated to a 5-level enhancement

III. ANALYSIS OF SENTENCING FACTORS

A thorough consideration of all of the sentencing factors set forth in 18 U.S.C. § 3553(a) suggests that the most appropriate sentence is the agreed upon sentence of 45 months' imprisonment.

The Supreme Court has declared: "As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." Gall v. United States, 128 S. Ct. 586, 596 (2007). "These requirements mean that '[i]n the usual sentencing, . . . the judge will use the Guidelines range as the starting point in the analysis and impose a sentence within the range." Peugh v. United States, 133 S. Ct. 2072, 2083 (2013) (quoting Freeman v. United States, 131 S. Ct. 2685, 2692 (2011) (plurality opinion); ellipsis in original). "Common sense indicates that in general, this system will steer district courts to more within-Guidelines sentences." Peugh, 133 S. Ct. at 2084. "The federal system adopts procedural measures intended to make the Guidelines the lodestone of sentencing." Id. Thus, the Sentencing Guidelines remain an indispensable resource for assuring appropriate and uniform punishment for federal criminal offenses.

In addition, this Court must also consider all of the sentencing considerations set forth in Section 3553(a). Those factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in

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under §2B3.1(b)(2)(C).

the most effective manner; (5) the guidelines and policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).[2]

Consideration of the Section 3553(a) Factors

The sentencing guideline factors suggest a sentence of 45 months' imprisonment, which is within the government's calculation of the applicable guideline range.

1. The nature and circumstances of the offense and the history and characteristics of the defendant favor the agreed upon sentence.

Johnson participated in one armed bank robbery on May 21, 2015. Apart from his participation in this armed bank robbery, he has no history of contact with law enforcement, with the exception of one arrest shortly after his eighteenth birthday for possession of a small amount of marijuana. PSR ¶¶ 49-54. Given that this is Johnson's first foray into criminal conduct, there is at least reason to hope that he will not reoffend.

During the armed robbery, Johnson's role may fairly be characterized as crowd control inside the bodega. He told some customers to lie on the ground and then walked behind the counter to take money and calling cards from the register. Johnson did not physically harm any of the victims and, equipped with a bb gun, Johnson posed less of a threat to the lives of those in the store than did his co-defendant armed with a firearm. Accordingly, a sentence of 45

[2] Further, the "parsimony provision" of Section 3553(a) states that "[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection." The Third Circuit has held that "district judges are not required by the parsimony provision to routinely state that the sentence imposed is the minimum sentence necessary to achieve the purposes set forth in § 3553(a)(2). . . . '[W]e do not think that the "not greater than necessary" language requires as a general matter that a judge, having explained why a sentence has been chosen, also explain why some lighter sentence is inadequate.'" United States v. Dragon, 471 F.3d 501, 506 (3d Cir. 2006) (quoting United States

months' imprisonment, amounting to a guidelines sentence when accounting for the dismissal of Count Nine, is appropriate.

2. The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

Armed robbery of commercial establishments is undoubtedly a grave criminal offense. Regardless of the fact that he brandished a non-lethal bb gun, Johnson knew that his accomplice was armed with a firearm and therefore capable of inflicting lethal force. In view of the seriousness of the offense, the need to promote respect for the law, and to provide just punishment, a sentence of 45 months' imprisonment is appropriate in this case.

3. The need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant;

A sentence of 45 months' imprisonment for Johnson's first serious criminal offense would also provide general and specific deterrence. A several year term of imprisonment would dissuade other persons from participating in robberies and would encourage Johnson to comply with the laws prohibiting violent crimes. It would also protect the public from the defendant for a substantial period of time.

To best ensure that Johnson stays the course, as recommended by the U.S. Probation Office in Appendix A to the PSR, any sentence imposed should address Johnson's mental health issues and drug dependence. The Pretrial Services Office for the Eastern District of Pennsylvania notified the Court of a positive test for marijuana use while Johnson was being supervised by that office. PSR ¶13. That positive drug test and a violation of Johnson's location monitoring resulted in the revocation of his bail. The government concurs with the U.S.

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v. Navedo-Concepcion, 450 F.3d 54, 58 (1st Cir. 2006)).

Probation Office's recommendation and respectfully requests that mental health and drug abuse treatment be a component of any sentence imposed.

4. The need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner;

Johnson is in need of educational and vocational training that he can utilize to enable him to live lawfully. Although a period of incarceration shall not be advocated as a measure to facilitate rehabilitation, it is a fact that while incarcerated Johnson will be able to obtain educational and vocational training without having to worry about financing it

5. The guidelines and policy statements issued by the Sentencing Commission and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct;

While the sentencing guidelines are advisory, they remain the sole means available for assuring some measure of uniformity in sentencing, fulfilling a key Congressional goal in adopting the Sentencing Reform Act of 1984. Reference to the guidelines, while carefully considering the 3553(a) factors particularly relevant to an individual defendant, is the only available means of preventing the disfavored result of basing sentences on the luck of the draw in judicial assignments. Therefore, the Supreme Court has held that "district courts must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process" in order to assure fair, proportionate, and uniform sentencing of criminal offenders. Gall, 128 S.Ct. at 596 n.6. Here, a 45 month term of imprisonment is within the calculated guideline range and, for this first time offender, would not result in an unwarranted disparity.

6. The need to provide restitution to any victims of the offense;

An armed robbery is a "crime of violence," as that term is used in Title 18, United

States Code, Section 3663A. Accordingly, pursuant to 18 U.S.C. §3663A, the Court shall order the defendant to make restitution to the victim of the armed robbery, 10th Street Market. Restitution owed for the May 21, 2015 armed robbery is in the amount of $480. The liability for restitution of defendant Kairashaad Johnson in this amount is joint and several with co-defendants Jose Rapalo and Jacob Pabon.

V. CONCLUSION

For the foregoing reasons, the government respectfully recommends a sentence of 45 months' imprisonment as agreed to by the parties.

Respectfully submitted,

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/s Eric A. Boden
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Government's sentencing memorandum has been served by electronic filing or email upon:

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